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10 *d/b/a MGM Grand*

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 MGM GRAND HOTEL, LLC d/b/a MGM
14 GRAND;

15 Plaintiff,

16 v.

17 KEVIN CHANG SHENG LONG,

18 Defendant.

Case No. 2:21-cv-001476-APG-NJK

**PLAINTIFF MGM GRAND
HOTEL, LLC d/b/a MGM
GRAND'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT AGAINST
DEFENDANT KEVIN CHANG
SHENG LONG**

19
20
21 **I. INTRODUCTION**

22 Plaintiff Kevin Chang Sheng Long's ("Long") Opposition to Plaintiff MGM Grand Hotel,
23 LLC d/b/a MGM Grand's ("MGM") Motion for Summary Judgment attempts, but fails, to
24 manufacture issues of fact regarding the enforceability of his debt to MGM. In doing so, the
25 Opposition solely relies upon Long's unsubstantiated and self-serving declaration, which is clearly
26 insufficient to prevent summary judgment from being entered in MGM's favor.

27 First, the Opposition erroneously asserts that there is a genuine issue of material fact
28 regarding the amount of Long's debt to MGM. However, the evidence produced in this matter

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1 confirms otherwise. Attached to MGM's Motion are the two credit instruments at issue, which
2 encompass Long's unpaid balance of \$6,795,725.00. (*See* Ex. 3 to Mot.) As set forth in detail
3 below, the outstanding debt owed by Long is confirmed by simply subtracting Long's payments in
4 the amount of \$1,864,675.00 from the principal amount owed on the five credit instruments he
5 executed, which totaled \$8,660,400.00. Given that Long's prior payments satisfied three of the
6 five credit instruments he executed, the only remaining credit instruments at issue are those that
7 were returned dishonored and unpaid.¹ (*See id.*)

8 Next, Long seeks to avoid his repayment obligations to MGM by raising a purported
9 intoxication defense. Specifically, Long asserts that the two (2) credit instruments at issue are
10 unenforceable by virtue of his alleged state of intoxication. However, Long's declaration does *not*
11 state that he was intoxicated to the point of lacking capacity to contract when he requested or
12 executed the credit instruments at issue. Moreover, the only evidence Long has presented in
13 support of this purported defense is his own self-serving, unsubstantiated declaration – which is
14 insufficient to create a genuine issue of material fact.

15 Finally, Long has waived any purported intoxication and/or incapacity to contract defense
16 by (1) ratifying the two credit instruments at issue, and (2) failing to disaffirm them within a
17 reasonable time. Indeed, Long voluntarily made payments to MGM toward the principal amount
18 of his debt – and the greater portion of those payments was applied toward the unpaid balance of
19 the two credit instruments at issue. Furthermore, despite having executed the two credit
20 instruments nearly four years ago, Long did not dispute their enforceability with MGM until filing
21 his Opposition.

22 For these reasons, and those discussed below, the Court should enter summary judgment
23 in MGM's favor as a matter of law on its claims for Breach of Contract, Breach of the Implied
24 Covenant of Good Faith and Fair Dealing, Conversion, and NRS § 41.620 Liability.

25 ///

26 ///

27 _____
28 ¹ As set forth herein, \$1,252,275.00 of Long's payments were applied to the unpaid balance of the two (2)
credit instruments still at issue in this action, thereby leaving an outstanding balance of \$6,795,725.00.

1 **II. ARGUMENT**

2 **A. There Is No Genuine Issue of Material Fact Regarding the Outstanding**
 3 **Amount Owed by Long**

4 Despite Long's assertion to the contrary, a genuine issue of material fact does not exist as
 5 to the outstanding amount owed to MGM. As set forth in MGM's Motion, Long executed five (5)
 6 credit instruments totaling \$8,660,400.00 in October 2018. (Declaration of Jennifer McEwin, ¶ 2;
 7 attached hereto as Exhibit 1.) The \$8,660,400.00 in credit was issued to Long on or about as
 8 follows:

9 October 13, 2018 at 5:28 p.m.: Instrument No. 2786376 in the amount of \$5,053,000.00;

10 October 17, 2018 at 7:31 p.m.: Instrument No. 2786625 in the amount of \$2,995,000.00;

11 October 17, 2018 at 7:31 p.m.: Instrument No. 2786626 in the amount of \$412,400.00;

12 October 30, 2018 at 3:02 a.m.: Instrument No. 2788177 in the amount of \$100,000.00; and

13 October 30, 2018 at 4:35 a.m.: Instrument No. 2788181 in the amount of \$100,000.00

14 (Ex. 1, ¶ 2; Cage Activity Data, a true and correct copy is attached hereto as Exhibit 2; Credit
 15 Instrument Issuance Data, a true and correct copy is attached hereto as Exhibit 3.)

16 From October 25, 2018 to November 30, 2020, Long made five (5) payments totaling
 17 \$1,864,675.00.² (Ex. 1, ¶ 3.) By making those payments, Long paid the following credit
 18 instruments in full: Instrument No. 2786626 (\$412,400.00), Instrument No. 2788177
 19 (\$100,000.00) and Instrument No. 2788181 (\$100,000.00). (*Id.*) The remaining amount of
 20 Long's payments, *i.e.* \$1,252,275.00, was thereby applied to the outstanding amount of the two
 21 credit instruments at issue, leaving an unpaid balance of \$6,795,725.00. (*Id.*)

22 Thereafter, MGM first presented Instrument No. 2786376 in the amount of \$5,053,000.00
 23 for payment by Long's bank. (Ex. 1, ¶ 4.) When that credit instrument was returned dishonored
 24 and unpaid, MGM attempted to deposit Instrument No. 2786625, which was in the lesser amount
 25

26
 27 ² As shown in Exhibit 2 hereto, Long's payments on October 25, 2018 in the amount of \$64,675.00, and
 28 November 30, 2018 in the amount of \$200,000.00, were front-money payments. Specifically, Long
 deposited gambling chips at MGM's casino cage that were applied to his outstanding debt at the conclusion
 of his stay. (Ex. 1, ¶ 3; Ex. 2.)

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1 of \$2,995,000.00. (*Id.*) As set forth in MGM's Motion, that credit instrument was also returned
2 dishonored and unpaid. (*Id.*)

3 Thus, Instrument No. 2786376 in the amount of \$5,053,000.00 and Instrument No.
4 2786625 in the partial amount of \$1,742,725.00 remain outstanding and unpaid. (*Id.* at ¶ 5.)
5 Considering Long's prior payments, which satisfied three of the five credit instruments he
6 executed, any assertion that MGM has failed to establish the outstanding amount owed is, on its
7 face, false. Long's unpaid balance of \$6,795,725.00 is clearly established by the two dishonored
8 and unpaid credit instruments attached to MGM's Motion. (*See* Ex. 3 to Mot.)

9 In addition to the foregoing, Long's Declaration alleges that he was not present in Las
10 Vegas on the dates identified on the two credit instruments at issue. (ECF No. 23-1, ¶¶ 13-14.)
11 However, casinos in Nevada generally do not date credit instruments until they are ready to be
12 deposited. (Ex. 1, ¶ 6.) Doing so ensures that the credit instruments will not become stale-dated
13 before they are presented to a patron's bank for payment. (*Id.*) This process is expressly
14 permitted by NRS 463.368(2), which states the following:

15 A licensee or a person acting on behalf of a licensee may accept an
16 incomplete credit instrument which:

17 (a) Is signed by a patron; and

18 (b) States the amount of the debt in figures

19 ***and may complete the instrument as is necessary for the instrument to***
20 ***be presented for payment.***

21 (Emphasis added.)

22 In fact, upon signing the Credit Application, Long acknowledged that MGM was
23 permitted to complete the credit instruments before depositing them. The Credit Application
24 expressly states the following: "I authorize MGMRI to complete and of the following information
25 on those markers: (1) name of payee; (2) ***a date***; (3) name, account number and/or address of any
26 of my banks and financial institutions; (4) electronic encoding of any of the above; and (5) as
27 otherwise authorized by law." (*See* Ex. 2 to Mot) (emphasis added.) By signing the Credit
28 Application, Long also agreed that a "marker does not become a negotiable instrument until such

1 time as MGMRI inserts information necessary to transform the marker into a negotiable
 2 instrument, [at] which time I agree *may be subsequent to the date that I signed the marker.*"
 3 (*Id.*) (Emphasis added.)

4 Based on the foregoing, Long has failed to establish a genuine issue of material fact as to
 5 the outstanding amount owed to MGM. Thus, the Court should enter summary judgment against
 6 Long in the principal amount of \$6,795,725.00.

7 **B. Long's Purported Intoxication Defense Cannot Defeat Summary Judgment**

8 **1. *Long's Intoxication Defense Is Not a Lack of Capacity Defense***

9 A presumption exists that a party has capacity at the time they execute a contract. *Lynn v.*
 10 *Magness*, 191 Md. 674, 682, 62 A.3d 604, 608 (1948). To overcome this presumption, that party
 11 must provide evidence of incapacity. *Id.* at 682, 62 A.3d at 608; *Schwartz v. Schwartz*, 95 Nev.
 12 202, 206 n.2, 591 P.2d 1137, 1140 n.2 (1979) (a party who asserts an affirmative defense has the
 13 burden to prove each element of the defense). Under Nevada law, "it must be shown that a man
 14 was incapable of exercising judgment, of understanding the proposed engagement, and of
 15 knowing what he was about when he entered into the contract, or else it would be held binding."
 16 *Seeley v. Goodwin*, 39 Nev. 315, 324, 156 P. 934, 937 (1916) (emphasis added); *see also Babcock*
 17 *v. Engel*, 58 Mont. 597, 194 P. 137 (1920) ("Intoxication must be so deep and excessive as to
 18 deprive one of his understanding. If intoxication is relied on as a defense, it must be to such a
 19 degree that the party who wishes to avoid his contract on this ground must have been deprived of
 20 his reason and understanding.").

21 "[T]he capacity to contract involves a person's inability to understand the terms of an
 22 agreement, not his actual understanding. Capacity relates to the status of the person rather than to
 23 the circumstances surrounding the transaction." *General Motors v. Jackson*, 111 Nev. 1026,
 24 1031, 900 P.2d 345, 349 (1995).

25 Further, it is not enough that a person was merely drinking at the time they executed the
 26 contract. *Stockmen's Guaranty Loan Co. v. Sanchez*, 194 P. 603, 605, 26 N.M. 499, 505 (1920)
 27 ("Assuming that the appellant was slightly under the influence of liquor at the time, the evidence
 28 falls far short of showing that he was so intoxicated as to be incapable of knowing what he was

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1 doing, which seems to be the extent of intoxication required to avoid a contract entered into by a
2 drunkard."). Courts have found that voluntary intoxication will not set aside a contract. *See Cook*
3 *v. Bagnell Timber Co.*, 78 Ark. 47, 48, 94 S.W. 695 (1906) ("[T]he contract of a person partially
4 intoxicated at the time will not be set aside because of his intoxication. That condition results
5 from his own act, and entitles him to no consideration whatever in either a court of law or of
6 equity.").

7 Here, Long's declaration does not state that he *lacked capacity* to knowingly request the
8 \$6,795,725.00 of credit at issue. In fact, according to his declaration, Long "does not dispute that
9 [he] executed casino markers with MGM" during his stay. (ECF No. 23-1, ¶ 10.) As set forth
10 above, there is a clear distinction between intoxication and incapacity. The fact that one may be
11 intoxicated does not in itself constitute a lack of capacity to contract. *See Stockmen's Guaranty*
12 *Loan Co.*, 194 P. at 605; *Cook*, 78 Ark. at 48. Because Long does not contend that he lacked
13 capacity upon requesting and executing the credit instruments at issue, his purported intoxication
14 defense cannot defeat summary judgment.

15 Moreover, with the exception of his own self-serving declaration, there is simply no
16 evidence that Long was intoxicated to the point of lacking capacity to contract when he executed
17 the two credit instruments at issue. Courts will not find a genuine issue of material fact where the
18 only evidence presented by the nonmoving party is "uncorroborated and self-serving" testimony.
19 *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) (citing *Kennedy v.*
20 *Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996)). Accordingly, Long's uncorroborated
21 declaration does not create a genuine issue of material fact as to the enforceability of the two
22 credit instruments at issue.

23 In addition, most if not all of Long's declaration is pure fiction and simply cannot be true.
24 For example, Long's assertion that he was intoxicated for the entirety of his stay at MGM's
25 property without any periods of sobriety is objectively absurd.³ Long's declaration also fails to
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27
28 ³ As discussed below, Long stayed at MGM's property from approximately September 28, 2018 to November 14, 2018.

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1 detail the quantity of alcohol he purportedly consumed, the time period in which the alcohol was
2 consumed, or his level of intoxication at any given time during his stay at MGM's property.

3 Furthermore, Long conveniently asserts that he was only "indebted to MGM" in the
4 amount of his past payments – \$1,864,675.00 – and is not responsible for the unpaid balance of
5 the two credit instruments. (*Id.* at ¶ 9.) Long does not explain how he was sober enough to
6 accept credit in the foregoing amount, but allegedly intoxicated when requesting and accepting
7 the remaining \$6,795,725.00 that is now owed to MGM. Clearly, Long's purported intoxication
8 defense has been manufactured to avoid his responsibility for the unpaid balance of the two
9 dishonored credit instruments at issue in this case.

10 Based on the foregoing, Long's self-serving and unsubstantiated declaration is wholly
11 insufficient to create a genuine issue of material fact regarding the enforceability of the two
12 unpaid credit instruments he executed. Because Long's purported intoxication defense, which
13 does not as a matter of law give rise to a lack of capacity defense, is completely meritless, the
14 Court should enter summary judgment in MGM's favor.

15 **2. *Long Waived Any Purported Intoxication or Incapacity to Contract***
16 ***Defense by Ratifying the Credit Instruments and/or Failing to Disaffirm***
Them Within a Reasonable Time

17 The Nevada Supreme Court has held that an incapacitated party "will be deemed to have
18 ratified the contract unless within a reasonable time after becoming sober he takes steps to
19 disaffirm it." *Seeley*, 39 Nev. at 323, 156 P. at 936; *see also Stockmen's Guaranty Loan Co.*, 194
20 P. at 605, 26 N.M. at 505 ("assuming that the appellant was incapacitated by drunkenness at the
21 time of the execution of the [contract], he nevertheless ratified his act by the numerous
22 subsequent acts of affirmance" after he was sober such as making payments on the contract);
23 Restatement (Second) of Contracts § 16 cmt. c ("On becoming sober, the intoxicated person must
24 act promptly to disaffirm [the contract].").

25 "A party must actively choose—or 'elect,' to invalidate a voidable contract." *Sununu v.*
26 *Philippine Airlines, Inc.*, 792 F. Supp. 2d 39, 56 (D.D.C. 2011). "The power of avoidance ...
27 terminates if the incapacitated party, upon regaining capacity, affirms or ratifies the contract."
28

1 *Hernandez v. Banks*, 65 A.3d 59, 67 (D.C. Ct. App. 2013); *Yannuzzi v. Commonwealth*, 390 A.2d
 2 331, 332 (Pa. Commw. 1978). Once a party ratifies a contract, it may not later withdraw its
 3 ratification and seek to avoid the contract." *Mo. Pac. R.R. Co. v. Lely Dev. Corp.*, 86 S.W.3d 787,
 4 792-93 (Tex. Ct. App. 2002). Ratification may be inferred by a party's course of conduct and
 5 need not be shown by express word or deed." *Id.* "Any act inconsistent with an intent to avoid a
 6 contract has the effect of ratifying the contract." *Id.*

7 Given the complete lack of evidence to the contrary, Long's purported intoxication defense
 8 is completely meritless. However, even if Long was intoxicated to the point of being
 9 incapacitated upon executing the two credit instruments at issue (which he was not), Long later
 10 ratified them by (1) executing three subsequent credit instruments that he later paid in full, and (2)
 11 making payments toward the two credit instruments he now disputes.

12 In addition to his ratification of the credit instruments, Long also failed to disaffirm them
 13 within a reasonable time.

14 **a. *Long's Actions Confirm His Ratification of the Credit***
 15 ***Instruments at Issue***

16 As stated in MGM's Motion, Long executed five credit instruments in favor of MGM
 17 between October 13, 2018 and October 30, 2018. The two dishonored credit instruments at issue
 18 in this matter – Instrument No. 2786376 in the amount of \$5,053,000.00 and Instrument No.
 19 2786625 in the amount of \$2,995,000.00 – were signed on October 13, 2018 and October 17,
 20 2018, respectively. (*See* Exs. 2-3.) On October 17, 2018, Long signed also signed Instrument
 21 No. 2786626 in the amount of \$412,400.00. (*Id.*) Long made his first payment toward the in the
 22 amount of \$64,675.00 on October 25, 2018. (Ex. 2.) This was five days before he executed the
 23 remaining two credit instruments, Instrument No. 2788177 and Instrument No. 278818. (Exs. 2-
 24 3.)

25 Thereafter, Long proceeded to make four additional payments toward his debt as follows:

- 26 – November 30, 2018: \$200,000.00
- 27 – February 27, 2019: \$500,000.00
- 28 – January 27, 2019: \$1,000,000.00

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1 – November 30, 2020: \$100,000.00
 2 (Ex. 1, ¶ 7.) Together, Long's five payments totaled \$1,864,675.00. (*Id.*) Long does not dispute
 3 that he made \$1,864,675.00 in payments toward his outstanding debt to MGM. (ECF No. 21-3, ¶
 4 9.)

5 The foregoing confirms that Long ratified the two credit instruments still at issue. Long
 6 first ratified the credit instruments by subsequently requesting and executing three additional
 7 credit instruments on October 17, 2018 and October 30, 2018. Next, Long later paid the three
 8 subsequent credit instruments in full, which was yet another act of ratification. Finally, after the
 9 three subsequent credit instruments were paid in full, Long *continued* to make payments toward
 10 the outstanding balance of his debt. As a result, \$1,252,275.00 of Long's payments to MGM were
 11 applied to the unpaid balance of the two credit instruments at issue in this matter.

12 Long's actions are fundamentally inconsistent with any purported intent to disaffirm the
 13 credit instruments. *Schmidt v. Shah*, 696 F. Supp. 2d 44, 63 (D.D.C. 2010) ("A party's power to
 14 avoid a contract ... is lost if, after the circumstances that made the contract voidable have ceased
 15 to exist, the party 'manifests to the other party his intention to affirm it or acts with respect to
 16 anything that he has received in a manner inconsistent with disaffirmance.'") (quoting
 17 Restatement § 380); *Alexander v. Winters*, 3 Nev. 475, 49 P. 116, 119 (1897) ("[N]o person can
 18 accept and reject the same instrument.")

19 Put simply, even if Long was intoxicated to the point of lacking capacity, he ratified the
 20 two credit instruments at issue by (1) taking out subsequent credit instruments, (2) paying those
 21 credit instruments in full, and (3) making \$1,252,275.00 in additional payments towards the two
 22 outstanding credit instruments. The foregoing clearly confirms that Long ratified the two unpaid
 23 credit instruments as a matter of law. *See Mo. Pac. R.R. Co. v. Lely Dev. Corp.*, 86 S.W.3d 787,
 24 792-93 (Tex. Ct. App. 2002) ("Whether a party has ratified a contract may be determined as a
 25 matter of law if the evidence is not controverted or is incontrovertible."); *Sununu*, 792 F. Supp. 2d
 26 at 56 ("By seeking to fulfill the contract, they foreclosed their opportunity to invalidate it."). As a
 27 result, Long cannot avoid his repayment obligations to MGM.

28 ///

b. *Long Made No Attempts to Disaffirm the Credit Instruments Until He Filed His Opposition to MGM's Motion for Summary Judgment Four Years Later*

Even if Long did not ratify the two credit instruments at issue – which he clearly did – Long failed to disaffirm them within a reasonable time. Upon reviewing Long's declaration, he does not allege that he ever informed MGM of his purported intoxication or any lack of capacity to execute the two credit instruments at issue. Accordingly, Long's Opposition marks his *first* attempt to disaffirm the credit instruments, despite having plenty of opportunities to do so.

Indeed, the two credit instruments at issue were signed nearly four years ago. Following their execution, Long made *five* payments toward the \$8,660,400.00 debt that he owed to MGM. When Long made his partial payments, he never challenged the enforceability of the credit instruments on the grounds of intoxication and/or incapacity to contract.

Further, Long stayed at MGM's property from approximately September 28, 2018 to November 14, 2018. (Ex. 1, ¶ 8; Redacted Room Folios, true and correct copies are attached hereto as Exhibit 4.) Thus, Long remained at MGM's property a *month* after the two (2) credit instruments were issued and signed. In fact, Long returned to stay at MGM's property from December 30, 2018 to December 31, 2018. (Ex. 1, ¶ 8; Ex. 3.) Again, and despite the length of his stay, Long *never* disputed the enforceability of the two credit instruments with MGM. (Ex. 1, ¶ 9.)

As set forth above, if Long intended to disaffirm the two credit instruments at issue, he was required to do so within a reasonable time. He clearly failed to do so. In fact, Long's Answer to MGM's Complaint does not raise intoxication or lack of capacity as an affirmative defense. (See ECF No. 18.) Because Long's Opposition marks the first time he has disputed the enforceability of the credit instruments on the grounds of intoxication and/or incapacity to contract, he failed to disaffirm them within a reasonable time as a matter of law. *See In re Bos. Shipyard Corp.*, 886 F.2d 451, 455 (1st Cir. 1989) (finding ratification where alleged victim waited over a year and a half before claiming that agreement had been signed under duress); *Int'l*

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1 *Techs. Consultants, Inc. v. Pilkington PLC*, 137 F.3d 1382, 1391 (9th Cir. 1998) (finding
2 ratification where alleged victim failed to claim voidability until filing the lawsuit).⁴

3 Finally, given that four years have passed since the credit instruments were issued, it goes
4 without saying that MGM is materially prejudiced by Long's newly invented defense of
5 intoxication and/or incapacity to contract. Among other things, any video surveillance of Long
6 during his October 2018 stay at MGM's property has likely been lost.

7 The fact that Long ratified the credit instruments at issue, and did not disaffirm them
8 within a reasonable time, confirms that he has waived an intoxication and/or incapacity to
9 contract defense in this action. Thus, the Court should enter summary judgment in favor of
10 MGM.

11 C. **Long Has Indicated That He Will Not Attend a Deposition in This Case, and**
12 **If Long Maintains This Position, His Declaration Cannot Be Used to Create A**
13 **Triable Issue Of Material Fact**

14 On March 11, 2022, MGM's counsel received an e-mail from Long's counsel, stating that
15 they would not produce Long for a deposition. (Declaration of Katie L. Cannata, Esq., ¶ 2; E-mail
16 Correspondence Regarding Long's Deposition, a true and correct copy is attached hereto as
17 Exhibit 6.) According to Long's counsel, the reason for Long's refusal to appear for a deposition
18 was that he would "be at risk for self-incrimination against his Fifth Amendment right if he is
19 deposed for this matter, which is the subject of the criminal matter." (Ex. 5, ¶ 2; Ex. 6.)

20 On March 14, 2022, the Parties convened for a meet and confer conference, whereby they
21 discussed the issue of Long's deposition, whether it be in-person or remote. (Ex. 5, ¶ 3.) During
22 their discussion, Long's counsel stated that he would discuss the issue further with Long and did
23 not take a formal position during the meet and confer conference. (*Id.*) In response, MGM's
24 counsel identified that if Long ultimately refuses to appear for a deposition, his declaration cannot

25 ⁴ A number of courts have examined what constitutes a "reasonable time" to disaffirm an allegedly void
26 contract. The following cases involved allegations of duress, but are nonetheless persuasive here: *Gallon*
27 *v. Lloyd-Thomas Co.*, 264 F.2d 821, 826 (8th Cir.1959) (ten months too long); *Abbadessa v. Moore*
28 *Business Forms, Inc.*, 987 F.2d 18, 23 (1st Cir.1993) (five months too long); *DiMartino v. Hartford*, 636
F.Supp. 1241, 1252 (D.Conn.1986) (two months too long); *Schmalz v. Hardy Salt Co.*, 739 S.W.2d 765,
767-68 (Mo.App.1987) (three months too long).

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1 be used as a basis for opposing MGM's Motion. *See also United States v. Parcels of Land*, 903
 2 F.2d 36, 43 (1st Cir.1990) (stating that a district court "had ample authority" to strike a
 3 defendant's affidavit submitted in opposition to a summary judgment motion, where the defendant
 4 had "invoked the fifth amendment and refused to answer the government's deposition
 5 questions."); *In re Edmond*, 934 F.2d 1304, 1308 (4th Cir.1991)
 6 ("[T]he Fifth Amendment privilege cannot be invoked as a shield to oppose depositions while
 7 discarding it for the limited purpose of making statements to support a summary judgment
 8 motion."); *see also, e.g., Lawson v. Murray*, 837 F.2d 653 (4th Cir.), *cert. denied*, 488 U.S. 831,
 9 109 S.Ct. 87, 102 L.Ed.2d 63 (1988) (striking testimony of witness who invoked the Fifth
 10 Amendment during cross-examination); *United States v. Baker*, 721 F.2d 647 (8th Cir.1983)
 11 (disregarding direct testimony after defendant invoked the Fifth Amendment to prevent cross-
 12 examination); *United States v. Sack*, 118 F.R.D. 500 (D.Neb.1987) (concluding, in the context of
 13 a decision denying use immunity in a civil suit, that the litigant had to choose between taking the
 14 Fifth Amendment and losing, or answering the discovery questions and potentially fueling a
 15 grand jury criminal investigation).

16 MGM's counsel alternatively noted that if Long continues to rely upon his declaration as a
 17 basis to oppose summary judgment, MGM has a right to depose him and his Fifth Amendment
 18 privilege against self-incrimination has been unequivocally waived. *See Parcels of Land*, 903
 19 F.2d at 43 (noting that an affidavit operates like other testimonial statements to raise the
 20 possibility that the witness has waived the Fifth Amendment privilege); *Mitchell v. United States*,
 21 526 U.S. 314, 321 (1999) ("It is well established that a witness, in a single proceeding, may not
 22 testify voluntarily about a subject and then invoke the privilege against self-incrimination when
 23 questioned about the details.").

24 Considering the foregoing authorities, Long cannot utilize his declaration to oppose
 25 MGM's Motion and simultaneously refuse to attend a deposition. Additionally, because Long has
 26 proffered a sworn declaration in opposition to the Motion, he has already waived his Fifth
 27 Amendment privilege.

28 ///

1 **III. CONCLUSION**

2 Based on the foregoing, Long has not established a genuine issue of material fact as to the
3 enforceability of the two credit instruments at issue in this matter. Thus, MGM requests that the
4 Court enter summary judgment in its favor.

5 DATED this 15th day of March, 2022.

6
7 SEMENZA KIRCHER RICKARD

8 /s/ Katie L. Cannata

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CERTIFICATE OF SERVICE

I am employed by the law firm of Semenza Kircher Rickard in Clark County, Nevada. I am over the age of 18 and not a party to this action. The business address is 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

On the 15th day of March, 2022, I served the document(s), described as:

**PLAINTIFF MGM GRAND HOTEL, LLC d/b/a MGM GRAND'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT AGAINST
DEFENDANT KEVIN CHANG SHENG LONG**

☒ by sending ☐ an original ☒ a true copy

☒ a. via **CM/ECF System** (*You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary*)

LAWRENCE C. HILL & ASSOCIATES

Lawrence C. Hill, Esq., larry@lvlegalhelp.com; info@lvlegalhelp.com

Sean O'Callaghan, Esq., sean.oc@lvlegalhelp.com

Attorneys for Defendant

☐ b. **BY U.S. MAIL.** I deposited such envelope in the mail at Las Vegas, Nevada. The envelope(s) were mailed with postage thereon fully prepaid. I am readily familiar with Semenza Kircher Rickard's practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

☐ c. **BY PERSONAL SERVICE.**

☐ d. **BY DIRECT EMAIL.**

☐ e. **BY FACSIMILE TRANSMISSION.**

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Olivia A. Kelly

An Employee of Semenza Kircher Rickard

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION
1	Declaration of Jennifer McEwin
2	Cage Activity Data
3	Credit Instrument Issuance Data
4	Redacted Room Folios
5	Declaration of Katie L. Cannata, Esq.
6	E-Mail Correspondence Regarding Long's Deposition

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

EXHIBIT 1

EXHIBIT 1

**DECLARATION OF JENNIFER MCEWIN IN SUPPORT OF
PLAINTIFF MGM GRAND HOTEL, LLC d/b/a MGM GRAND'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT KEVIN CHANG
SHENG LONG**

I, JENNIFER MCEWIN, state and declare as follows:

1. I am the Executive Director of Credit and Collections for Plaintiff MGM Grand Hotel, LLC d/b/a MGM Grand ("MGM"). I make the following Declaration in support of MGM's Reply in Support of Motion for Summary Judgment (the "Motion") against Defendant Kevin Chang Sheng Long ("Long") (the "Reply"). I have personal knowledge of the facts contained in this Declaration and if called to do so, would testify competently thereto. The documents, reports and/or records referred to in this Declaration were made in the course of regularly conducted business activities at or near the time of the matters set forth and I have access to these records in the course of my employment with MGM.

2. As set forth in MGM's Motion, Long executed five (5) credit instruments totaling \$8,660,400.00 in October 2018. The \$8,660,400.00 in credit was issued to Long on or about as follows:

October 13, 2018 at 5:28 p.m.: Instrument No. 2786376 in the amount of \$5,053,000.00;

October 17, 2018 at 7:31 p.m.: Instrument No. 2786625 in the amount of \$2,995,000.00;

October 17, 2018 at 7:31 p.m.: Instrument No. 2786626 in the amount of \$412,400.00;

October 30, 2018 at 3:02 a.m.: Instrument No. 2788177 in the amount of \$100,000.00; and

October 30, 2018 at 4:35 a.m.: Instrument No. 2788181 in the amount of \$100,000.00

True and correct copies of the Cage Activity Data and Credit Instrument Issuance Data are attached to MGM's Reply as Exhibits 2 and 3, respectively.

3. From October 25, 2018 and November 30, 2020, Long made five (5) payments totaling \$1,864,675.00. As shown in Exhibit 2 to MGM's Reply, Long's payments on October 25, 2018 in the amount of \$64,675.00, and November 30, 2018 in the amount of \$200,000.00, were front-money payments. Specifically, Long deposited gambling chips at MGM's casino cage that were applied to his outstanding debt at the conclusion of his stay. By making his five (5) payments, Long paid the following credit instruments in full: Instrument No. 2786626

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10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

1 (\$412,400.00), Instrument No. 2788177 (\$100,000.00) and Instrument No. 2788181
2 (\$100,000.00). The remaining amount of Long's payments, *i.e.* \$1,252,275.00, was thereby
3 applied to the outstanding amount of the two credit instruments at issue, leaving an unpaid
4 balance of \$6,795,725.00.

5 4. Thereafter, MGM first presented Instrument No. 2786376 in the amount of
6 \$5,053,000.00 for payment by Long's bank. When that credit instrument was returned dishonored
7 and unpaid, MGM attempted to deposit Instrument No. 2786625, which was in the lesser amount
8 of \$2,995,000.00. As set forth in MGM's Motion, that credit instrument was also returned
9 dishonored and unpaid.

10 5. Thus, Instrument No. 2786376 in the amount of \$5,053,000.00 and Instrument No.
11 2786625 in the partial amount of \$1,742,725.00 remain outstanding and unpaid.

12 6. Casinos in Nevada generally do not date credit instruments until they are ready to
13 be deposited. Doing so ensures that the credit instruments will not become stale-dated before
14 they are presented to a patron's bank for payment. This process is expressly permitted by NRS
15 463.368(2).

16 7. In addition to his front-money payments on October 25, 2018 (\$64,675.00) and
17 November 30, 2018 (\$200,000.00), Long subsequently made three additional payments to MGM
18 as follows:

- 19 – February 27, 2019: \$500,000.00
- 20 – January 27, 2019: \$1,000,000.00
- 21 – November 30, 2020: \$100,000.00

22 Thus, as stated above, Long's five payments totaled \$1,864,675.00.

23 8. Putting aside his requests and use of credit, Long stayed at MGM's property from
24 approximately September 28, 2018 to November 14, 2018. In fact, Long returned to stay at
25 MGM's property from December 30, 2018 to December 31, 2018. True and correct copies of the
26 Redacted Room Folios are attached to MGM's Reply as Exhibit 4.

27 9. Based upon my review of internal documents, reports and/or records, Long never
28 challenged the enforceability of the two credit instruments at issue or raised any purported

1 intoxication and/or lack of capacity defense with MGM before filing his Opposition to the Motion
2 for Summary Judgment.

3 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
4 is true and correct.

5 DATED this 14th day of March, 2022, in Clark County, Nevada.

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8 JENNIFER MCEWIN
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SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

EXHIBIT 2

EXHIBIT 2

Date	Document#	Action	Amount	Payment Method (s)	Markers Owed
11/30/18	401526134	PAID-CAGE	200,000	FRONT MON	8,395,725
10/30/18	2788181	DREW-PIT	100,000		8,595,725
10/30/18	2788177	DREW-PIT	100,000		8,495,725
10/25/18	401523828	PAID-CAGE	64,675	FRONT MON	8,395,725
10/17/18	2786626	DREW-PIT	412,400		8,460,400
10/17/18	2786625	DREW-PIT	2,995,000		8,048,000
10/13/18	2786376	DREW-PIT	5,053,000		5,053,000

EXHIBIT 3

EXHIBIT 3

1	CRRQ301	J12			MGM GRAND			3/10/22
2	Prop Nbr:	09			INQUIRE DOCUMENTS			
3								
4	DOCUMENT :	2786376		5,053,000	COUNTER CHECK			
5	Account #:	2219626						
6	Cust Name:	LONG, KEVIN C						
7	Types:							
8								
9	Type	Date	Time	Loc	By	Game-ID	Document	Amount
0	ISSUED	10/13/2018	5:28 PM	PM03	MH1	01BC21SD		\$5,053,000
1								
2								
3								
4								
2								

1	CRRQ301	J12			MGM GRAND			3/10/22
2	Prop Nbr:	09			INQUIRE DOCUMENTS			
3								
4	DOCUMENT :	2786625		2,995,000	COUNTER CHECK			
5	Account #:	2219626						
6	Cust Name:	LONG, KEVIN C						
7	Types:							
8								
9	Type	Date	Time	Loc	By	Game-ID	Document	Amount
10	ISSUED	10/17/2018	7:31 PM	PM04	MC2	01BC21SS		\$2,995,000
11								
12								
13								
14								
22								
23								

A	B	C	D	E	F	G	H	I
	CRRQ301	J12			MGM GRAND			3/10/22
	Prop Nbr:	09			INQUIRE DOCUMENTS			
	DOCUMENT :	2786626		412,400		COUNTER CHECK		
	Account #:	2219626						
	Cust Name:	LONG, KEVIN C						
	Types:							
	Type	Date	Time	Loc	By	Game-ID	Document	Amount
	ISSUED	10/17/2018	7:31 PM	PM04	MC2	01BC21SS		\$412,400
	RDMD	10/25/2018					401523828	\$412,400

A	B	C	D	E	F	G	H	I
1	CRRQ301	J12			MGM GRAND			3/10/22
2	Prop Nbr:	09			INQUIRE DOCUMENTS			
3								
4	DOCUMENT :	2788177		100,000		COUNTER CHECK		
5	Account #:	2219626						
6	Cust Name:	LONG, KEVIN C						
7	Types:							
8								
9	Type	Date	Time	Loc	By	Game-ID	Document	Amount
10	ISSUED	10/30/2018	3:02 AM	PM04	ARN	09BC03GG		\$100,000
11								
12								
13								
14								
22								
23								

[illegible]

EXHIBIT 4

EXHIBIT 4

Mr. Kevin Long


Room No. 33031
Conf No. 784462183
Arrival 09/28/18
Departure 10/28/18

DATE	DESCRIPTION	CHARGES	CREDITS
09/28/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
09/29/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
09/30/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/01/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/02/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/03/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/04/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/05/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/06/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/07/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/08/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/09/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/10/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/11/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/12/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/13/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/14/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/15/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/16/18	Room Rate Comp	7,500.00	

REDACTED

Mr. Kevin Long
[REDACTED]

Room No. 33031
 Conf No. 784462183
 Arrival 09/28/18
 Departure 10/28/18

DATE	DESCRIPTION	CHARGES	CREDITS
10/17/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/18/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/19/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/20/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/21/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/22/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/23/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/24/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/25/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/26/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/27/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	7,500.00	
10/28/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Comp Settlement		225,000.00
Total		225,000.00	225,000.00
Balance		0.00	

REDACTED

Mr. Kevin Long


Room No. 33031
Conf No. 784462183
Arrival 09/28/18
Departure 10/28/18

DATE**DESCRIPTION****CHARGES****CREDITS**

If you were a guest at an MGM Resorts property within the last 14 days and have subsequently tested positive for the coronavirus (COVID-19), we ask that you contact us at covid19@mgmresorts.com so that we can provide your information to the local health department to support their contact tracing efforts.

REDACTED

Mr. Kevin Long
[REDACTED]

Room No. 30090
 Conf No. 784484113
 Arrival 09/28/18
 Departure 10/28/18

DATE	DESCRIPTION	CHARGES	CREDITS
09/28/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
09/29/18	Room Rate Comp	2,185.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
09/30/18	Room Rate Comp	960.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/01/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/02/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/03/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/04/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/05/18	Room Rate Comp	2,185.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/06/18	Room Rate Comp	2,185.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/07/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/08/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/09/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/10/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/11/18	Room Rate Comp	960.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/12/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/13/18	Room Rate Comp	2,185.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/14/18	Room Rate Comp	960.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/15/18	Room Rate Comp	1,800.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/16/18	Room Rate Comp	1,800.00	

Mr. Kevin Long


Room No. 30090
Conf No. 784484113
Arrival 09/28/18
Departure 10/28/18

DATE	DESCRIPTION	CHARGES	CREDITS
10/17/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	2,185.00	
10/18/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	1,800.00	
10/19/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	1,800.00	
10/20/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	1,800.00	
10/21/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	960.00	
10/22/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	1,800.00	
10/23/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	1,800.00	
10/24/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	1,800.00	
10/25/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	960.00	
10/26/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	1,800.00	
10/27/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Room Rate Comp	2,185.00	
10/28/18	[20010001->20010002] Comp auto transfer from Window 1 to 101 Comp Settlement		52,110.00
Total		52,110.00	52,110.00
Balance		0.00	

Mr. Kevin Long


Room No. 30090
Conf No. 784484113
Arrival 09/28/18
Departure 10/28/18

DATE

DESCRIPTION

CHARGES

CREDITS

If you were a guest at an MGM Resorts property within the last 14 days and have subsequently tested positive for the coronavirus (COVID-19), we ask that you contact us at covid19@mgmresorts.com so that we can provide your information to the local health department to support their contact tracing efforts.

REDACTED

Mr. Kevin Long
[REDACTED]

Room No. 14554
 Conf No. 784703128
 Arrival 10/06/18
 Departure 10/09/18

DATE	DESCRIPTION	CHARGES	CREDITS
10/09/18	Room Rate Comp	196.00	
	[20010001->20010002] Comp transfer from Window 1 to 101		
10/09/18	Room Rate Comp	128.00	
	[20010001->20010002] Comp transfer from Window 1 to 101		
10/09/18	Room Rate Comp	128.00	
	[20010001->20010002] Comp transfer from Window 1 to 101		
10/09/18	Comp Settlement		452.00
Total		452.00	452.00
Balance		0.00	

If you were a guest at an MGM Resorts property within the last 14 days and have subsequently tested positive for the coronavirus (COVID-19), we ask that you contact us at covid19@mgmresorts.com so that we can provide your information to the local health department to support their contact tracing efforts.

REDACTED

Mr. Kevin Long
[REDACTED]

Room No. 21114
 Conf No. 785183585
 Arrival 10/22/18
 Departure 10/27/18

DATE	DESCRIPTION	CHARGES	CREDITS
10/22/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	128.00	
10/23/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	128.00	
10/24/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	128.00	
10/25/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	68.00	
10/26/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	128.00	
10/27/18	Comp Settlement		580.00
Total		580.00	580.00
Balance		0.00	

If you were a guest at an MGM Resorts property within the last 14 days and have subsequently tested positive for the coronavirus (COVID-19), we ask that you contact us at covid19@mgmresorts.com so that we can provide your information to the local health department to support their contact tracing efforts.

REDACTED

Mr. Kevin Long
[REDACTED]

Room No. 21126
 Conf No. 785321795
 Arrival 10/26/18
 Departure 10/31/18

DATE	DESCRIPTION	CHARGES	CREDITS
10/26/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	150.00	
10/27/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	230.00	
10/28/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	150.00	
10/29/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	150.00	
10/30/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 101	230.00	
10/31/18	Comp Settlement		910.00
Total		910.00	910.00
Balance		0.00	

If you were a guest at an MGM Resorts property within the last 14 days and have subsequently tested positive for the coronavirus (COVID-19), we ask that you contact us at covid19@mgmresorts.com so that we can provide your information to the local health department to support their contact tracing efforts.

Mr. Kevin Long


Room No. 30090
Conf No. 785358085
Arrival 10/28/18
Departure 11/07/18

DATE	DESCRIPTION	CHARGES	CREDITS
10/28/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 102	1,800.00	
10/29/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 102	1,800.00	
10/30/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 102	2,185.00	
10/31/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 102	2,185.00	
11/01/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 102	1,800.00	
11/02/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 102	1,800.00	
11/03/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 102	1,800.00	
11/04/18	Room Rate Comp [20010001->20010002] Comp auto transfer from Window 1 to 102	960.00	
11/07/18	Comp Settlement		14,330.00
Total		14,330.00	14,330.00
Balance		0.00	

Mr. Kevin Long
**Room No.** 33031
Conf No. 785032541
Arrival 10/28/18
Departure 11/14/18

DATE	DESCRIPTION	CHARGES	CREDITS
10/28/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/29/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/30/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
10/31/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/01/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/02/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/03/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/04/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/05/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/06/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/07/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/08/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/09/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/10/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/11/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/12/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/13/18	Room Rate Comp	7,500.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
11/14/18	Comp Settlement		127,500.00

Mr. Kevin Long
[REDACTED]

Room No. 33031
Conf No. 785032541
Arrival 10/28/18
Departure 11/14/18

DATE	DESCRIPTION	CHARGES	CREDITS
	Total	127,500.00	127,500.00
	Balance	0.00	

If you were a guest at an MGM Resorts property within the last 14 days and have subsequently tested positive for the coronavirus (COVID-19), we ask that you contact us at covid19@mgmresorts.com so that we can provide your information to the local health department to support their contact tracing efforts.

REDACTED

Mr. Kevin Long
**Room No.** 19219
Conf No. 786927035
Arrival 12/30/18
Departure 01/01/19

DATE	DESCRIPTION	CHARGES	CREDITS
12/30/18	Room Rate Comp	230.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
12/31/18	Room Rate Comp	480.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
01/01/19	Comp Settlement		710.00
Total		710.00	710.00
Balance		0.00	

If you were a guest at an MGM Resorts property within the last 14 days and have subsequently tested positive for the coronavirus (COVID-19), we ask that you contact us at covid19@mgmresorts.com so that we can provide your information to the local health department to support their contact tracing efforts.

Mr. Kevin Long
[REDACTED]

Room No. 19226
Conf No. 786927039
Arrival 12/30/18
Departure 01/01/19

DATE	DESCRIPTION	CHARGES	CREDITS
12/30/18	Room Rate Comp	230.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
12/31/18	Room Rate Comp	480.00	
	[20010001->20010002] Comp auto transfer from Window 1 to 101		
01/01/19	Comp Settlement		710.00
Total		710.00	710.00
Balance		0.00	

If you were a guest at an MGM Resorts property within the last 14 days and have subsequently tested positive for the coronavirus (COVID-19), we ask that you contact us at covid19@mgmresorts.com so that we can provide your information to the local health department to support their contact tracing efforts.

EXHIBIT 5

EXHIBIT 5

**DECLARATION OF KATIE L. CANNATA, ESQ. IN SUPPORT OF PLAINTIFF MGM
GRAND HOTEL, LLC d/b/a MGM GRAND'S REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AGAINST DEFENDANT KEVIN CHANG SHENG LONG**

I, KATIE L. CANNATA, state and declare as follows:

1. I am an Associate with Semenza Kircher Rickard, counsel for Plaintiff MGM Grand Hotel, LLC d/b/a MGM Grand ("MGM"). I make the following Declaration in support of MGM's Reply in Support of its Motion for Summary Judgment Against Defendant Kevin Chang Sheng Long ("Long") (the "Reply"). I have personal knowledge of the facts contained in this Declaration and if called to do so, would testify competently thereto.

2. On March 11, 2022, I received an e-mail from Long's counsel, Lawrence Hill, Esq., stating that he would not produce Long for a deposition. According to Mr. Hill, the reason for Long's refusal to appear for a deposition was that he would "be at risk for self-incrimination against his Fifth Amendment right if he is deposed for this matter, which is the subject of the criminal matter." A true and correct copy of the E-mail Correspondence Regarding Long's Deposition is attached to MGM's Reply as Exhibit 6.

3. On March 14, 2022, Mr. Hill and Lawrence J. Semenza, III, Esq. convened for a meet and confer conference, whereby they discussed the issue of Long's deposition, whether it be in-person or remote. During their discussion, Mr. Hill stated that he would discuss the issue further with Long and did not take a formal position during the meet and confer conference. In response, Mr. Semenza identified that (1) if Long ultimately refuses to appear for a deposition, his declaration cannot be used as a basis for opposing MGM's Motion, and (2) if Long continues to rely upon his declaration as a basis to oppose summary judgment, MGM has a right to depose him and his Fifth Amendment privilege against self-incrimination has been unequivocally waived.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 15th day of March, 2022 in Clark County, Nevada.

/s/ Katie L. Cannata
KATIE L. CANNATA

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

EXHIBIT 6

EXHIBIT 6

From: [Lawrence J. Semenza, III](#)
To: [larry](#); [Katie Cannata](#)
Cc: [Sean@lvlegalhelp.com](#)
Subject: RE: MGM v. Long - Notice of Deposition of Kevin Long
Date: Friday, March 11, 2022 2:51:41 PM

Let's do 2 on Monday. L.J.

Lawrence J. Semenza, III, Esq.
Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
E-mail: ljs@skrlawyers.com
Website: www.skrlawyers.com
Telephone: 702-835-6803
Cellular: 702-612-9813
Facsimile: 702-920-8669

To ensure compliance with the requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

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From: larry <larry@lvlegalhelp.com>
Sent: Friday, March 11, 2022 2:47 PM
To: Lawrence J. Semenza, III <ljs@skrlawyers.com>; Katie Cannata <klc@skrlawyers.com>
Cc: Sean@lvlegalhelp.com
Subject: RE: MGM v. Long - Notice of Deposition of Kevin Long

I can do Monday at 10 am or 2pm and Tuesday at 1030 am or 3pm. Thanks. Larry

----- Original message -----

From: "Lawrence J. Semenza, III" <ljs@skrlawyers.com>
Date: 3/11/22 12:53 PM (GMT-08:00)
To: larry <larry@lvlegalhelp.com>, Katie Cannata <klc@skrlawyers.com>
Cc: info@lvlegalhelp.com, Michael <michael@parientelaw.com>
Subject: RE: MGM v. Long - Notice of Deposition of Kevin Long

We certainly can, let me know when you can hop on a call. L.J.

Lawrence J. Semenza, III, Esq.

Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
E-mail: ljs@skrlawyers.com
Website: www.skrlawyers.com
Telephone: 702-835-6803
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From: larry <larry@lvlegalhelp.com>
Sent: Friday, March 11, 2022 12:51 PM
To: Lawrence J. Semenza, III <ljs@skrlawyers.com>; Katie Cannata <klc@skrlawyers.com>
Cc: info@lvlegalhelp.com; Michael <michael@parentelaw.com>
Subject: RE: MGM v. Long - Notice of Deposition of Kevin Long

That is what I'm thinking - unless there is some other solution we can craft. Would you like to have a 2.34 conference? Thanks, Larry C. Hill, Esq.

----- Original message -----

From: "Lawrence J. Semenza, III" <ljs@skrlawyers.com>
Date: 3/11/22 12:34 PM (GMT-08:00)
To: "Lawrence C. Hill, Esq." <Larry@lvlegalhelp.com>, Katie Cannata <klc@skrlawyers.com>
Cc: info@lvlegalhelp.com, Michael <michael@parentelaw.com>, "Lawrence J. Semenza, III" <ljs@skrlawyers.com>
Subject: RE: MGM v. Long - Notice of Deposition of Kevin Long

Hi Larry, just to be clear you will not be producing Mr. Long for a deposition at all in this case (either in person or remotely), correct? L.J.

Lawrence J. Semenza, III, Esq.
Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
E-mail: ljs@skrlawyers.com
Website: www.skrlawyers.com

Telephone: 702-835-6803
Cellular: 702-612-9813
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From: Lawrence C. Hill, Esq. <Larry@lvlegalhelp.com>
Sent: Friday, March 11, 2022 12:12 PM
To: Katie Cannata <klc@skrlawyers.com>
Cc: Lawrence J. Semenza, III <ljs@skrlawyers.com>; info@lvlegalhelp.com; Michael <michael@parientelaw.com>
Subject: RE: MGM v. Long - Notice of Deposition of Kevin Long

Dear Ms. Cannata -

Due to the pending criminal complaint that MGM has filed with the Clark County District Attorney's Office, Bad Check Unit, Las Vegas Justice Court Case Number: 21-CR-034464, Mr. Long shall be at risk for self-incrimination against his Fifth Amendment right if he is deposed for this matter, which is the subject of the criminal matter whereby the State of Nevada is alleging two counts of Non-sufficient Funds, two counts of theft, and one count of Obtaining Money under False Pretense.

We will be filing a motion for protective order this coming week. I've also copied Mr. Michael Pariente, who is his criminal defense counsel.

Best regards,



Lawrence C. Hill, Esq.
Attorney – Managing Partner
Larry@LVLegalHelp.com



LAWRENCE C. HILL & ASSOCIATES, LTD.
2020 W. Sunset Road
Henderson, Nevada 89014
Office: (702) 530-5688 / Fax: (702) 666-9109
www.LVLegalHelp.com

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